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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Lily, *et al*,

Plaintiffs,

v.

Jan Rouven Fuechtener,

Defendant.

Case No. 2:19-cv-00352-RFB-EJY

MOTION FOR SUMMARY JUDGMENT

Defendant Jan Rouven Fuechtener ("Fuechtener"), by and through the undersigned counsel, respectfully moves pursuant to Fed. R. Civ. P. 56 for summary judgment against all the Plaintiffs on all their claims in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs collectively seek \$1,050,000 from defendant Fuechtener based on his alleged possession of child pornography that allegedly contained some images of each of them. *See* ECF 1 (Complaint). The Court should dismiss the Plaintiffs' claims, with prejudice, because, assuming *arguendo* they are the same "victims" in Fuechtener's criminal case, the Plaintiffs—as represented by the United States of America—agreed not to pursue civil claims against Fuechtener if they received criminal restitution under Fuechtener's plea agreement. As a result of the Plaintiffs' decision to be bound by the criminal restitution order, the Plaintiffs are now barred from bringing this suit under the doctrine of collateral estoppel.

STANDARD OF REVIEW

Summary judgment is appropriate when "there is no genuine dispute as to any material fact." Fed. R. Civ. Proc. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). *Paraplue, Inc. v. Mills*, 555 Fed.Appx. 679, 680 (9th Cir. 2014). Once the movant has met his initial burden of showing "an absence of evidence" supporting the nonmoving party's case, the burden is on the nonmoving party to show with "specific facts" that there is a genuine issue of fact suitable for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson*, 477 U.S. at 250, 106 S.Ct. 2505; *Paraplue, Inc.*, 555 Fed. Appx. at 680.

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

On October 9, 2018, Assistant U.S. Attorney Elham Roohani told Judge Gloria Navarro in *United States v. Fuechtener*, 2:16-cr-100-GMN-CWH (D. Nev.) that:

And I'll just make clear, your Honor, because perhaps he doesn't understand this, is *if they don't get the money from this plea agreement*, they have indicated to me that they will come after him civilly.

See ECF 374 at 28 in *Fuechtener*, 2:16-cr-100-GMN-CWH (emphasis added).

Fuechtener asks the Court to take judicial notice that AUSA Roohani stated the above to Judge Navarro on October 9, 2018.

Assuming *arguendo* the Plaintiffs are the same victims in Fuechtener's criminal case, "Defendant has in fact paid his restitution obligation to Plaintiffs. See Judgment United States v. Fuechtener, DCNV Case 2:16-cr-00100-GMN-CWH, Doc. 345, page 9, attached as Ex. 2, Hepburn Dec., ¶ 6 Hepburn Dec., and Declaration of James R. Marsh at ¶4." See, Plaintiff's MSJ at 4.

ARGUMENT

Privity for collateral estoppel purposes exists when, among other things, "the nonparty agreed to be bound by the litigation of others." *Griswold v. County of Hillsborough*, 598 F.3d 1289, 1292 (11th Cir. 2010), citing *Taylor v. Sturgell*, 553 U.S. 880, 893-95 (2008). In light of AUSA Roohani's statement that the Plaintiffs, assuming *arguendo* they are the victims, would only pursue Fuechtener civilly if the restitution contemplated by Fuechtener's plea agreement was not paid, the instant suit is barred. Because the Plaintiffs agreed to be bound by the award of restitution

1 in Fuechtener's criminal case, their current civil claims are barred by collateral
2 estoppel.

3 **CONCLUSION**

4 The Plaintiffs' claims are barred by collateral estoppel. Fuechtener should be
5 granted summary judgment on all claims by the Plaintiffs.

6
7 Respectfully submitted,

8 /s/ Lance J. Hendron

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this
19th day of November 2020, via CM/ECF on all counsel of record.

/s/ Brandon Sample
Brandon Sample